88-1386

Supreme Court, U.S.
FILED
FEB 21 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

TERM, 1988

WILLIAM A. GOICHMAN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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30 pp

QUESTION PRESENTED

WHERE THE UNCONTRADICTED EVIDENCE SHOWS THAT PETITIONER GAVE THE US TAX COURT A CHANGE OF ADDRESS, BUT THE TAX COURT INADVERTENTLY SENT THE FINAL DECISION TO THE OLD ADDRESS, NECESSITATING THE TAKING OF AN UNTIMELY APPEAL, (25 DAYS LATE) WAS THE COURT OF APPEALS FOR THE NINTH CIRCUIT IN ERROR IN DISMISSING THE APPEAL, CONSIDERING THE SPECIFIC DEMANDS OF THE "DUE PROCESS" CLAUSE?

List of Parties

The parties to the proceedings below were Petitioner, William A. Goichman, and Respondent, Commissioner of Internal Revenue. Both parties are before this Court.

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COMMISSIONER OF INTERNAL REVENUE

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Petitioner, WILLIAM A. GOICHMAN, respectfully prays that for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled proceedings, on November 23, 1988, in which the Court of Appeals held that the notice of appeal was not timely filed.

/ / / /

On October 11, 1988, the Court of Appeals had issued an Order to Show Cause why the appeal should not be dismissed and in response thereto, Petitioner filed a Response on or about October 18, 1988. The Government filed a Reply to that Response on or about October 29, 1988, and Petitioner filed a Response to the Government's Reply on or about November 5, 1988.

OPINIONS BELOW

The opinion and order of the United States Court of Appeals for the Ninth Circuit, of which review is sought here, is unpublished and reproduced in Appendix I hereto at page 1a.

JURISDICTION

The dismissal of the appeal was a final order and it was entered by the Court of Appeals for the Ninth Circuit on or about November 23, 1988.

This Petition for Certiorari is filed within 90 days of this date pursuant to

Supreme Court Rule 20.2 and 20.4.

This Court's jurisdiction arises pursuant to 26 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

This Petition is based upon the 5th Amendment of the United States Constitution wherein it provides that the Federal Government shall not deprive any person of his property without "due process of law."

STATEMENT OF THE CASE

I. Facts and Background.

On February 16, 1988, the United States Tax Court found that Petitioner owed the United States Government taxes and penalties as follows: (Appendix II, 2a)

Year	Deficiency	Penalty
1967	$31,515.47	$15,757.74
1968	$39,259.47	$19,629.74
1969	$54,520.22	$27,260.11

These findings were based upon the "net worth" theory consisting of guesses and speculations. The United States Tax Court failed to apply the "strict scrutiny" test of

Holland but rather the "clearly erroneous" rule to the calculations of the Internal Revenue Service.

On January 12, 1988, Petitioner wrote to the United States Tax Court and advised it that replies and communications should be made to Petitioner at "16161 Ventura Boulevard, #C-825, Encino, California 91436," instead of a previous address at 16311 Ventura Boulevard, Encino, California.

The latter address was no longer being used by Petitioner and mail to that address for him was not calculated to reach him.

The United States Tax Court overlooked this direction and sent the final order of judgment dated February 16, 1988, to that address, which did not reach the Petitioner "until sometime towards the end of May, 1988," at which time Petitioner "promptly filed his appeal" on or about June 10, 1988, a little over three months but less than four months of the final judgment.

The Court of Appeals for the Ninth Circuit held that the appeal was untimely filed and dismissed on November 23, 1988.

REASON FOR GRANTING THE PETITION

Question of Public Importance and of the Quality of the Administration of Justice.

The Circuit Court's decision involves an important federal question, which should be settled by this Court. Rule 17, Sup.Ct. Rules.

All courts of this land are beholden to uphold the United States Constitution and that document takes precedence over all rules and laws of Congress.

This Court has enunciated an elementary and fundamental rule of constitutional law, epitomized by its decision in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950), as follows:

"An elementary and fundamental requirement of due process in any

> proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

This Court held in Robinson v. Hanrahan, 409 U.S. 38, 93 Sup.Ct. 30, 34 L.Ed.2d 47 (1972) that where the state knew that the owner of an automobile was not the address to which notice of the automobile forfeiture proceeding was sent, the manner of service, although permissible under the statute, was not reasonably calculated to apprise the owner of the pendency of the forfeiture proceeding and deprived him of due process of law.

The cases have nullified actions which were not attended with appropriate notice when the Government knew or should have known of the proper address or a more appropriate

address to which to send notice. See, e.g., Greene v. Lindsey, 456 U.S. 444, 102 Sup.Ct. 1874, 72 L.Ed.2d 249 (1982) (notices posted on door of apartment in an eviction proceeding, often torn down); Mullane v. Central Hanover Tr. Co., 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950) (notice by publication to beneficiaries of a common trust fund where names and address were known); accord, Walker v. Hutchinson City, 352 U.S. 112, 77 S.Ct. 200, 1 L.Ed.2d 178 (1956); Schroeder v. City of New York, 371 U.S. 208, 213, 83 S.Ct. 279, 282, 9 L.Ed.2d 255 (1962); Covey v. Town of Somers, 351 U.S. 141, 70 S.Ct. 724, 100 L.Ed. 1021 (1956); New York v. N.Y., New Haven & Hart. RR Co., 344 U.S. 293, 73 S.Ct. 299, 97 L.Ed. 333 (1953).

The clear signal from the cases is that where, as here, the U.S. Tax Court is apprised of Petitioner's address to which it should send the judgment, and does not, that

the failure should not deprive Petitioner of his right to appeal, especially when he did file his appeal within 30 days of the 90 day period.

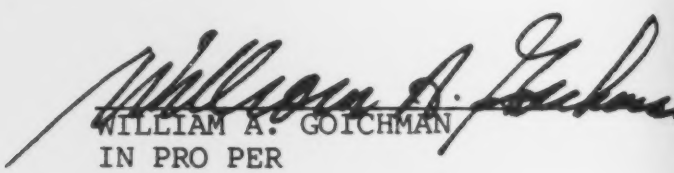
Rule of Civil Procedure 4(a)(5) authorizes the district court to extend the appeal time by 30 days. Former Rule 73(a) provided for extension of time for appeal "based upon a failure of party to learn of entry of judgment." Fed. Rule of Appellate Procedure 4(a)(5) also allows for a 30 day extra period. Although the decisions of the U.S. Tax Court are not covered by these rules, these rules do at least offer a rule of thumb standard for an additional window period. Cf. U.S. v. Pena, 175 US 500, 20 S.Ct. 165, 44 L.Ed. 251 (1899), appeal time extended

A party's abilities to take steps to safeguard his interests does not relieve the Government of its constitutional obligation under the due process clause. Mennonite Board of Missions v. Admas, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983). In this

case, this Court stated:

> "Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party, whether unlettered or well versed in commercial practice, of its name and address are reasonably ascertainable."

It is therefore respectfully requested that the judgment of the Ninth Circuit Court of Appeals be reversed or vacated and the case remanded to that Court for further proceedings. Plenary consideration should not be necessary for this remand.



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DATED: February 14, 1989

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
November 23, 1988
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

WILLIAM A. GOICHMAN, Plaintiff-Appellant,	)	NO. 88-7237
vs.	)	ORDER
COMMISSIONER OF INTERNAL REVENUE, Defendant-Appellee.	)	

Before: FARRIS, CANBY and REINHARDT, Circuit Judges

The court has received appellant's response to the October 11, 1988 order to show cause and appellee's reply to the response. The court lacks jurisdiction to consider this appeal because the notice of appeal was not timely filed. See Red. R. App. P. 13(a). This appeal is dismissed.

MoCal 11/21/88
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UNITED STATES TAX COURT

WILLIAM A. GOICHMAN, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	Docket No. 10042-83

DECISION

Pursuant to the opinion of the Court filed September 28, 1987, and incorporating herein the facts recited in the respondent's computations as the findings of the Court, it is:

ORDERED and DECIDED: That there are deficiencies in income tax and additions to tax due from petitioner for the taxable years as shown below.

Year	Deficiency	Addition to tax I.R.C. §6653(b)
1967	$31,515.47	$15,757.74
1968	$39,259.47	$19,629.74
1969	$54,520.22	$27,260.11

(Signed) ARTHUR L. NIMS, III

Judge.

Entered: FEB 16 1988

No._____

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TERM, 1988

WILLIAM A. GOICHMAN,

Petitioner,

vs.

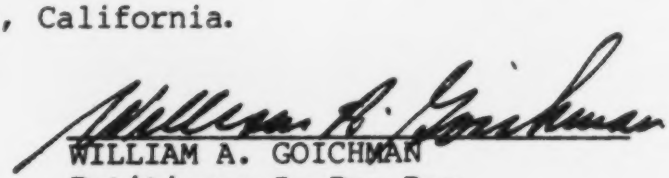
COMMISSION OF THE INTERNAL REVENUE,

Respondent.

I, WILLIAM A. GOICHMAN, hereby certify that on this 17 day of February , 1989 three copies of the Petition for Writ of Certiorari in the above-entitled case were mailed, first class postage prepaid, to counsel for respondents:

David A. Mustone, Esq.
Daniel J. Wiles, Esq.
Appellate Dept. IRS
1111 Constitution Ave N.W.
Rm. 4136
Washington, D.C. 20224

Executed on February 17 , 1989 at Los Angeles, California.



WILLIAM A. GOICHMAN
Petitioner In Pro Per